



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2019-0682

RIN 1625-AA09

Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina. This proposed temporary modification will allow the drawbridge to be maintained in the closed position and is necessary to accommodate bridge maintenance.

DATES: Comments and relate material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0682 using Federal e-Rulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757-398-6557, email Michael.R.Thorogood@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |
| OMB | Office of Management and Budget |
| § | Section |
| U.S.C. | United States Code |

II. Background, Purpose and Legal Basis

The North Carolina Department of Transportation, who owns and operates the Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina, has requested this modification to allow the drawbridge to be maintained in the closed-to-navigation position to facilitate bridge maintenance of the drawbridge.

The Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina has a vertical clearance of 40 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position. The current operating schedule for the drawbridge is published in 33 CFR §117.829 (a).

This proposed temporary final rule is necessary to facilitate safe and effective bridge maintenance of the drawbridge, while providing for the

reasonable needs of navigation. A work platform will reduce the vertical clearance of the entire bridge span to approximately 34 feet above mean high water in the closed position. Vessels that can safely transit through the bridge in the closed position with the reduced clearance may do so, if at least a thirty-minute notice is given, to allow for navigation safety.

The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 499.

III. Discussion of Proposed Rule

Under this proposed temporary final rule, the drawbridge will be maintained in the closed-to-navigation position twenty-four hours a day, seven days a week from 7 p.m. on January 1, 2020, through 12:01 a.m. on June 30, 2021. The bridge will open on signal for daily scheduled openings at 6 a.m., 10 a.m., 2 p.m., and 7 p.m., if at least a twenty-four hour notice is given; except for bridge closures authorized in accordance with 33 CFR §117.829 (a) (4). The draw will also open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel's draft; except for bridge closures authorized in accordance with CFR §117.829 (a) (4). At all other times the drawbridge will operate per 33 CFR §117.829 (a).

The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position. Vessels that can safely transit through the bridge in the closed

position with the reduced vertical clearance may do so, if at least a thirty-minute notice is given, to allow for navigation safety.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that vessels can still transit the bridge on signal for daily scheduled openings at 6 a.m., 10 a.m., 2 p.m., and 7 p.m., if at least a twenty-four hour notice is given; except for bridge closures authorized in accordance with 33 CFR §117.829 (a) (4). The draw will open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel’s draft; except for bridge closures authorized in accordance with 33 CFR §117.829 (a)

(4). At all other times the drawbridge will operate per 33 CFR §117.829 (a).

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and the U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f).

We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters.

Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period.

Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you

go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; DHS Delegation No. 0170.1.

2. Amend §117.829 by adding paragraph (a) (5) to read as follows:

§ 117.829 Northeast Cape Fear River

(a) * * *

(5) From 7 p.m. on January 1, 2020, through 12:01 a.m. on June 30, 2021, the draw will be maintained in the closed-to-navigation position. The draw will open on signal, if at least a twenty-four hour notice is given, for scheduled openings at 6 a.m., 10 a.m., 2 p.m. and 7 p.m.; except for bridge closures authorized in accordance with (a) (4) of this section. The draw will open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel's draft; except for bridge closures authorized in accordance with (a) (4) of this section.

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Dated: November 25, 2019

G. G. Stump
Captain, U.S. Coast Guard
Acting Commander, Fifth Coast Guard District

[FR Doc. 2019-27355 Filed: 12/18/2019 8:45 am; Publication Date: 12/19/2019]